



APPENDIX

Schedule I

P. L. 1886, Chapter 97, page 126.

“An Act to enable street car or horse railroad companies to provide better accommodation to the public, by using what is now known as the cable system for motive power on elevated roads.

“BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That any and every street car or horse railroad, or railway company, or railway or railway or railroad company now operating a street railroad by horse power, incorporated under the laws of this state, in order to afford more rapid, safe and comfortable means of transporting passengers than is possible on a surface road, be and the same hereby is and are authorized and empowered to construct, maintain and operate, within the limits of the territory in which such company or companies is and are authorized by law to construct, maintain and operate surface roads, one or more elevated railroads, with necessary stations and stairways, over the streets or highways in such city or cities, town or towns, township or townships; provided, that the cars on such elevated road or roads shall be propelled by means of a wire rope or cable, to be put and kept in motion by stationary steam power, located at such convenient point or points as may be necessary for the purpose, beyond the limits of any street or public highway, and not be locomotive steam engines; and provided, further, that such manner, in regard to elevation above the street or highway over which they are to be constructed, as not to interfere with the use of any public sewer, water pipe or any other public work, nor with ordinary public travel thereon, except to such extent as may be unavoidable in car-

rying out the provisions of this act; and provided, further, that no elevated railroad shall be constructed over any street or highway unless the consent, in writing, of the owners of at least one-half of the property fronting on such street, the owner or owners of which have not given their consent, be first ascertained and paid in the manner hereinbefore provided; and provided, also, that the consent of the municipal authorities of the city, town or township, in which such road is proposed to be built, be first had and obtained."

The foregoing statute authorized the erection of the elevated railroad structure which was the subject of *Lorentz v. Public Service Ry. Co.*, 103 N. J. L. 104, 135 Atl. 818.

"The building of such a structure was authorized by a statute of 1887 subject to certain conditions precedent, the performance of which was not drawn in question * * * the structure was there lawfully under the permission of the municipal authorities and the ordinance of Jersey City, was duly admitted in evidence."

Schedule II

Decisions defining the common law in New Jersey imposing liability upon a Municipal corporation for active wrongdoing in the performance of a governmental duty which is authorized by statute.

1890—*Hart v. Union County*, 57 N. J. L. 90, 29 Atl. 490 (Supreme Court).

Union County under a statute, P. L. 1889, page 58, enabling freeholders to improve and maintain public roads, made an excavation in the public highway.

"As the wrongful act charged was done in a highway thus disclosed to be within the scope of the powers conferred on this municipal corporation, its liability is thereby evinced."

1931—*Buffington v. Atlantic County*, 11 N. J. Misc. 443 (Circuit Court).

County under authority of N. J. R. S. 27:16-1 to 11, constructed a highway around a tree which was left in the highway. Complaint states cause of action.

"If the plaintiff could establish the fact that the county in construction and improvement of this road, so widened it as to include in the paved portion of the highway a large tree, and failed thereafter to provide travelers at night with a reasonable warning of the presence of the tree in that location, the county would be liable upon the charge of active wrongdoing and positive misfeasance such as comprehended by the exception to the rule exempting municipal corporations from liability."

1935—*Allas v. Rumson*, 115 N. J. L. 593, 181 Atl. 175, 102 A. L. R. 648 (Court of Errors and Appeals).

Under the authority of the statute authorizing municipalities to construct public buildings, N. J. R. S. 40:60-6, Rumson built a borough hall with an inclined ramp without a guard rail or protection (see brief, p. 10).

1936—*Hammond v. County of Monmouth*, 117 N. J. L. 11, 186 Atl. 452 (Supreme Court).

County under authority of New Jersey P. L. 1918, page 607, was repairing a culvert and left

an opening in the highway. County held liable to one injured.

“Thus notwithstanding that the legislature authorized the repair to this culvert, and that the only way the culvert could be repaired was by an excavation in the highway, nevertheless the failure of the county to provide adequate protection constituted active wrongdoing on its part.”

1938—*Fisher v. Nutley*, 120 N. J. L. 290, 199 Atl. 40 (Court of Errors and Appeals).

Town placed an iron pipe within traveled street. Town was in control of its streets by N. J. R. S. 40:67-1. Judgment for plaintiff affirmed.

“In the present case the act of putting the pipe in the road was authorized but the manner was unauthorized, for the defendant was not authorized to place it there without warning or barriers” (p. 293).

1928—*Vickers v. Camden*, 122 N. J. L. 14, 3 Atl. 2nd 613.

Plaintiff injured because traffic lights, constructed by virtue of N. J. P. L. 1928, page 362, showed green for both highways.

“Operation of lights being a governmental function, in the absence of active wrongdoing, as here, there can be no recovery. * * * There is no testimony that the lights were improperly constructed.”

1940—*Fredericks v. Dover*, 125 N. J. L. 288, 15 Atl. 2nd 784 (Court of Errors and Appeals).

Plaintiff recovered judgment for injuries sustained by falling on sewer cover. Town had statu-

tory authority to construct sewers under N. J. R. S. 40:63-1-7.

“The law is well settled that any obstruction or erection in a public highway which interferes with the rights of a person lawfully passing thereon amounts to a common or public nuisance for which a municipality is charged with the responsibility if it was an active agent or instrument in the creation of the perilous condition.”

1941—*Casta v. Newark*, 126 N. J. L. 375, 19 Atl. 2nd 629 (Supreme Court).

City excavated a portion of the roadway surface. Judgment for plaintiff affirmed. City had statutory control of streets under N. J. R. S. 40:67-1.

1941—*Lamb v. Camden*, 126 N. J. L. 448, 20 Atl. 2nd 348 (Supreme Court).

Plaintiff's judgment against city affirmed for injuries sustained by running into a traffic standard. Traffic standard erected under authority of N. J. P. L. 1927, page 477.

1941—*Newman v. Ocean Township*, 127 N. J. L. 287, 21 Atl. 2nd 841 (Court of Errors and Appeals).

Judgment for plaintiff who was injured by a curb which tipped as she was crossing street affirmed. Curb was erected under statutory authority of N. J. R. S. 40:56-1.

“The evidence was such that the jury was justified in finding that the curbing—so constructed as to constitute a dangerous condition—was a misfeasance. For this an action lies against a municipality.”

1941—*Jaixen v. Bloomfield*, 127 N. J. L. 370 (affirmed 128 N. J. L. 318), 22 Atl. 2nd 276 (app. 25 Atl. 2nd 879) (Supreme Court).

Judgment for plaintiff, a passenger in automobile, who was injured in crossing a valley gutter at street intersection affirmed. Town had statutory authority to construct gutter under N. J. R. S. 40:56-1.

“Thus it is clear that the testimony justified a finding that the valley gutter was reconstructed in 1936 or 1937; that its reconstruction was the act of the municipality; that it was negligence, affirmative in character, and in this situation a private action lies.”

1942—*Reardon v. Wanaque*, 129 N. J. L. 18, 28 Atl. 2nd 54 (Supreme Court).

Judgment of non-suit reversed. Plaintiff was injured while curbing was being constructed by the W.P.A. Act of Borough was authorized by N. J. R. S. 40:67-1.

“If a duty under performance be imposed upon the municipality by statute or ordinance that duty may not be avoided by delegating the work to an independent contractor. Certainly a municipality has the duty of maintaining the public highway, and even though the independent contractor be performing the work without supervision nonetheless he is exercising the chartered power or privilege of the municipality. In this situation the municipality is answerable for his active wrongdoing.”

1943—*Wright v. Newark*, 130 N. J. L. 239, 32 Atl. 2nd 543 (Supreme Court).

Judgment for plaintiff affirmed. City had excavated sidewalk. City was given authority over sidewalk by N. J. R. S. 40:180-1.

“We conclude that the proofs fully sustain the jury’s finding that the nuisance was created by the city and was an act of active wrongdoing” (p. 241).